

HOUSE BILL 727

By Hensley

AN ACT to enact the "Tennessee Protection from
Secondhand Smoke for Children Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 55, Chapter 9, is amended by adding the following as a new part.

§ 55-9-701. This act shall be known and may be cited as the "Tennessee Protection from Secondhand Smoke for Children Act".

§ 55-9-702.

(a) For purposes of this part:

(1) "Motor vehicle" means any vehicle used in the transportation of persons or property on streets or highways, including automobiles, trucks, trailers, semi-trailers and truck/semi-trailer combinations, but not including motorcycles, or vehicles propelled solely by human muscular power, such as bicycles; and

(2) "Smoke" means inhaling, exhaling, burning, or carrying any lighted cigarette, cigar, pipe, weed, plant, or other combustible substance in any manner or in any form.

(b) It is an offense for the operator or any passenger to smoke cigarettes, pipes, or cigars in a motor vehicle when a child restrained or required by statute to be restrained in a rear-facing child safety seat, a forward-facing child safety seat, or a booster seat as required by § 55-9-602 is also present in such vehicle, regardless of whether any windows of the motor vehicle are down.

§ 55-9-703.

(a)

(1) Probable cause for a violation of this section shall be based solely upon a law enforcement officer's clear and unobstructed view of a person smoking as prohibited by this part. Notwithstanding any law to the contrary, no citation or warrant for arrest shall be issued for a violation of this part unless a person is stopped by a law enforcement officer for a separate violation of law and is issued a citation or warrant for arrest for the separate violation of law.

(2) A law enforcement officer who observes a person violating this part shall issue a citation to the violator, but shall not arrest or take into custody any person solely for violating this part. A motor vehicle, the contents of the motor vehicle or the operator or a passenger in the motor vehicle may not be inspected or searched solely as a result of a violation of this part.

(b) Notwithstanding any law to the contrary, no more than one (1) citation may be issued for a violation of this part per vehicle per incident.

§ 55-9-704.

(a) A violation of this part is a Class C misdemeanor, punishable only by a fine not to exceed twenty-five dollars (\$25.00) for the first offense and a fine not to exceed fifty dollars (\$50.00) for any subsequent offenses. All proceeds from the fines imposed by this part shall be deposited in the state general fund and designated for the exclusive use of the child safety fund as established pursuant to § 55-9-602.

(b) A person charged with a violation of this part may, in lieu of appearing in court, pay a fine of fifty dollars (\$50.00) to the clerk of the court in the county in which the offense charged is alleged to have been committed.

(c) No clerk's fee or court costs, including, but not limited to, any statutory fees of officers, shall be imposed or assessed against persons convicted of violating this part. No litigation tax levied pursuant to title 67, chapter 4, part 6, shall be imposed or assessed against persons convicted of violating this act.

§ 55-9-705. Law enforcement officers may only issue verbal warnings for violations of this part for the first one hundred eighty (180) days following the effective date of this part.

§ 55-9-706. At no time shall a violation of this section be assigned a point value for suspension or revocation of a license by the department, nor shall such violation be construed as any other offense under this title.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 5. This act shall take effect July 1, 2009, the public welfare requiring it.